THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

F.A.O. No.750 of 1992

Date of Decision: 13 -9 -2006

Parshotam Kumar **.....Appellant**

v.

Sadhu Khan and others **.....Respondents**

CORAM: HON'BLE MR.JUSTICE P.S.PATWALIA

***

Present: Ms.Radhika Suri, Advocate
for the appellant.

Mr.Ashok Jindal, Advocate
for respondent No.1.

None for respondents 3 and 4.

***

P.S.PATWALIA, J. (Oral)

This order will dispose of F.A.O.Nos.750 and 751 of 1992. These two appeals have been filed by the claimants seeking enhancement of compensation awarded to them by the Motor Accident Claims Tribunal, Bathinda (hereinafter to be referred as, `the Tribunal').

Briefly facts leading to the filing of these appeals are that on 27.12.1986 at about 8.00 P.M. Vijay Rani Goel claimant in F.A.O.No.751 of 1992 along with her husband Parshotam Kumar claimant in F.A.O.No.750 of 1992 were travelling from Bathinda to Rampura in their car No.PBP–585 with some other relatives when the car met with an accident and was struck by a truck No.PUK – 749 which was driven by Sadhu Khan respondent No.1 in these appeals. The truck

was owned by Punjab State Marketing and Co-operative Federation Limited, Gidderbaha respondent No.2 in these appeals.

The Tribunal after examining the controversy has concluded that the accident was caused due to rash and negligent driving of the driver of the truck. After recording the said finding and assessing the evidence, the Tribunal awarded a sum of Rs.1,50,000/- to Vijay Rani Goel and a compensation of Rs.12,000/- to Parshotam Kumar. A sum of Rs.6,000/- was awarded as compensation for the damage caused to the car and Rs.6,000/- for the injuries suffered by him.

Learned counsel for the appellants convassing the case of Vijay Rani Goel contended that as a result of this accident she had suffered an injury in her spinal cord. Due to this injury she has become totally paralysed in the lower part of her body. She is not in a position to move about. She is confined to bed. She has to be shifted from the bed to the wheel chair with the help of two persons. She even cannot answer the call of nature on her own. It is stated that immediately after the accident she was taken to a local hospital and from there she was referred to Daya Nand Medical College, Ludhiana. She remained admitted there for about two months and was operated uponn in her spinal cord in an effort to improve her condition. She had to be kept in a special room and an amount of Rs.50,000/- to Rs.60,000/- was spent on her treatment. She was further referred to Ganga Ram Hospital, Delhi where she was again operated upon in her spinal cord. She remained in that hospital for about 15-16 days in a special ward. However, in spite of that her condition did not improve. As a result of this she has to be served with special diet and there has to be kept an attendant to lookafter her all the time.

Learned counsel for the appellant submits that as a result of the accident appellant Vijay Rani Goel is totally confined to bed and is totally dependent upon others. Under these circumstances, it is submitted that compensation awarded, a sum of Rs.1,50,000/-, is very less. Learned counsel has drawn my attention to a judgment of the Hon'ble Supreme Court in

R.D.Hattangadi v. Pest Control (India) Pvt. Ltd. and others, 1995 Accident Claims Journal 366 to contend that in that judgment the Court has taken a view that while assessing the compensation payable to the claimant, the same has to be assessed separately as pecuniary damages and special damages. While pecuniary damages are in respect of the expenses which a victim has actually incurred and which are capable of being calculated in terms of money, the non pecuniary damages are those which are incapable of being assessed by mathematical calculations. The pecuniary damages include expenses incurred by the claimant for medical attendance, loss of earning profits and other material loss. The non pecuniary damages are for mental and physical shock, pain and sufferings, damages to compensate for the loss of amenities of life, for loss of expectation of life, damages for inconvenience, hardship, discomfort, disappointment etc. The relevant portion of the judgment is as hereunder:-

> *"9. Broadly speaking, while fixing an amount of compensation payable to a victim of an accident, the damages have to be assessed separately as pecuniary damages and special damages. Pecuniary damages are those which the victim has actually incurred and which are capable of being calculated in terms of money; whereas non-pecuniary damages are those which are incapable of being assessed by arithmetical calculations. In order to appreciate two concepts pecuniary damages may include expenses incurred by the claimant: (i) medical attendance; (ii) loss of earning of profit up to the date of trial; (iii) other material loss. So far as non-pecuniary damages are concerned, they may include (i) damages for mental and physical shock, pain and suffering already suffered or likely to be suffered in future; (ii) damages to compensate for the loss of amenities of life which may include a variety of matters, i.e., on account of injury the claimant may not be able to walk, run or sit; (iii) damages for the*

loss of expectation of life, i.e., on account of injury the normal longevity of the persons concerned is shortened; (iv) inconvenience, hardship. Discomfort, disappointment, frustration and mental stress in life."

She thereafter drew my attention to a Division Bench judgment of this Court in **Chander Kumar Pahwa v. State of Haryana and others**, 1996(1) PLR 415. There relying upon a judgment of the Hon'ble Supreme Court as also other judgments, the Court has observed as hereunder:-

"3. It has been said time and again that compensation in terms of money is a poor consolation to the injured. There can be no substitute in terms of money for the loss of limbs etc. of the injured, yet attempts are made to assess the pecuniary loss and compensation awarded on preponderance of probabilities compensation as have emerged from time to time are:-

(i) Tortfeaser is liable for all damages flowing directly from the tort irrespective of its being expected or not; (ii) The sum arrived at ordinarily should be just and as nearly as possible which should made good, the loss, the sufferer has suffered so for as money could do; (iii) Full compensation is to be made for pecuniary loss suffered which does not mean a wooden formulae of annual income multiplied by years. Past and future prospects of loss have to be determined in terms of money and have to be kept in mind. Compensation for injuries is to be calculated keeping in view the injuries suffered, the pain and suffering undergone or likely to be undergone, physical as well as psychological effects on the health of the sufferer, the expenses incurred including the prospective expenses, the medical treatment and its nature, nursing, special medical appliances, domestic help, consortium, expenses to cure,

loss of ability to enjoy pleasant things of life and the qualitative difference made in the life by the injuries causing loss to avail the amenities.

4. There is no gain saying that while assessing compensation, the Tribunal has to be imaginative, wise and creative though while doing so the principles established that perfect justice is not attainable nor would be wise in the search of nearest approximate of justice. The already judicially determined awards assessing compensation in case of person who has suffered similar injuries can be taken as indicative for arriving at a just compensation.

5. Lastly though not leastly, it has been summed up that instead of itemissing the compensation under various heads, the Court has to apply the principle to the effect that whether the sum awarded is just and fair sum in the facts and circumstances of each case keeping in view the principles stated above.

6. Learned counsel for the appellant in order to buttress his submission relied on the principles laid down by Hon'ble the Supreme Court for assessing the compensation, by its judgment reported as R.D.Hattangadi v. M/s. Pest Control (India) Pvt. Ltd., (1995-2) 110 P.L.R. 298 (S.C.) wherein the damage has been categorised into two categories i.e. one is pecuniary damage that is actually suffered and calculated which includes the medical expenses incurred loss of earning and other material losses while the other is special damages or non-pecuniary damages which are incapable of being assessed by arithmetical calculations. These category of damages includes damage foe mental and physical shock, pain and suffering, already suffered or likely to be suffered in future, the loss of amenities of life which may include a variety of

matters, loss of expectation of life, disappointment, frustration and mental stress in life etc."

A reading of the aforesaid judgments would show that while assessing damages in such a case where the claimant has been rendered permanently incapacitated for the whole of her life and needs an attendant and special diet, the Court has to apply the principle as to whether the sum awarded is just and fair in the facts and circumstances of the case keeping in view the fact that the compensation should be calculated for injuries, pain and sufferings, physical as well as psychological effects on the health of the injured, the expenses incurred including the prospective expenses on medical treatment etc.

Learned counsel for the appellants submits that even if it is taken that the claimant would be spending a sum of Rs.1,000/- p.m. on account of special diet and attendant, for the last 18 years alone the figure would come to a sum of Rs.2,16,000/-. Apart from this she submits that a reading of the evidence would show that at least a sum of Rs.50,000/- was actually spent by the claimant on medical expenses. She submits that the claimant should be awarded another sum of Rs.1,50,000/- on account of pain and sufferings and any reasonable amount for future diet and medical expenses on account of an attendant as also for the loss of quality of life suffered by her on account of the said accident.

Having heard learned counsel for the appellants, I am of the opinion that the claimant Vijay Rani Goel should be awarded a sum of Rs.2,00,000/- on account of special diet and an attendant which she has been maintaining and would have to maintain for the future. It may be mentioned that at the time of accident, appellant Vijay Rani Goel was 28 years old and today she would be 47 years old. Her expectancy of life can reasonably be expected for another two decades. A sum of Rs.50,000/- is awarded on account of actual medical expenses already incurred by her. I am also inclined to award another sum of Rs.1,75,000/- as damages for mental and physical shock suffered by her and which she is likely to suffer in

future as also the damages to compensate for loss of amenities of life which include variety of matters, loss of expectation of life, disappointment and the frustration caused to her. Therefore, the total compensation is enhanced to a sum of Rs.4,25,000/-. The amount would also carry interest at the rate of 6% per annum from the date of application till realisation. The amount already paid would be adjusted in the amount to be paid.

The liability for payment of compensation shall be joint and several of all the respondents upto Rs.1,00,000/- and thereafter for the balance amount the liability shall be of respondents 1 and 2. This would be subject to any further orders passed by this Court in the first appeal stated to have been filed by respondent No.2 and pending in this court.

In so far as the compensation awarded to claimant Parshotam Kumar is concerned, learned counsel submits that he had been awarded a sum of Rs.12,000/-. She therefore stated that in his case also the compensation should be enhanced. However, I find that Parshotam Kumar had suffered only simple injuries and is leading a healthy life. After hearing the learned counsel, I find that no case is made out to enhance the compensation awarded to Shri Parshotam Kumar.

For the reasons aforementioned, F.A.O.No.750 of 1992 filed by Parshotam Kumar is dismissed. However, F.A.O.No.751 of 1992 filed by Vijay Rani Goel is allowed in the aforementioned terms.

(P.S.PATWALIA)

September 13, 2006. **JUDGE**

RC